

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

FS MEDICAL SUPPLIES, LLC,

Plaintiff,

v.

TANNERGAP, INC. AND TANNER
PHARMA UK LIMITED,

Defendants;

and

FS MEDICAL SUPPLIES, LLC,

Plaintiff,

v.

TANNER PHARMA UK LIMITED; RAYMOND
FAIRBANKS BOURNE; MARY EVERETT
BOURNE,

Defendants.

Case No. 3:21-cv-501-RJC-WCM

Case No. 3:23-cv-598-RJC-WCM

**NOTICE OF ADDITIONAL INFORMATION IN OPPOSITION TO PLAINTIFF'S
MOTION TO COMPEL PRODUCTION OF ESI FROM JONATHAN BRACEY'S
MOBILE PHONE**

Tanner Pharma UK Limited ("TPUK") and TannerGAP, Inc. ("TannerGAP," and together, the "Tanner Defendants") respectfully submit this Notice of Additional Information in Opposition to Plaintiff FS Medical Supplies, LLC ("FSMS") motion to compel production of ESI from Jonathan Bracey's mobile phone (ECF 174) and FSMS's Notice of Additional Information (ECF No. 199) (the "Notice").

1. The Notice continues to ignore the most critical aspect of Mr. Bracey's position: Mr. Bracey will not permit the **removal** of irrelevant personal data from his phone. Mr. Bracey testified that as long as the data "stays on my phone and doesn't go anywhere, then that's fine." (ECF No. 199-1).

2. Both Mr. Kiefer's declaration and FSMS's October 4, 2024 correspondence confirm that their collection method would require a forensic image of Mr. Bracey's device – i.e., a **removal** of all data (including irrelevant personal data) from his phone to transmit that data to another location. *See* ECF No. 199-2, Declaration of Tim Kiefer ¶ 7 ("A forensic image is extracted from the device"); ECF No. 199-3 ("The procedure involves using a computer to write a forensic image of Mr. Bracey's phone")

3. In fact, the Tanner Defendants explained this to FSMS on October 8, 2024 and informed FSMS that the Tanner Defendants "confirmed with Mr. Bracey that the specific process identified in your letter and set forth in Mr. Kiefer's declaration does not assuage his concerns, and he continues to object to a forensic image of his device." *See* 2024.10.08 Response to October 4 Bracey ESI Letter (Ex. A). It is telling that this response was not submitted to the Court despite being sent to FSMS via email a full day before its filing, as it addresses the issue raised directly.

4. For the reasons set forth in the Tanner Defendants' Opposition (ECF No. 176), the Tanner Defendants cannot force him to allow a forensic image of his device.

This the 10th day of October 2024.

McGuireWoods LLP

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